PD-1182-20
COURT OF CRIMINAL APPEALS
AUSTIN, TEXAS
Transmitted 4/15/2021 9:05 AM
Accepted 4/15/2021 10:00 AM
DEANA WILLIAMSON
CLERK

NO. PD-1182-20

IN THE COURT OF CRIMINAL APPEALS
OF THE STATE OF TEXAS

FILED
COURT OF CRIMINAL APPEALS
4/15/2021
DEANA WILLIAMSON, CLERK

THE STATE OF TEXAS
APPELLANT,

V.

TRENTON KYLE GREEN,
APPELLEE.

On appeal from Cause Number 49,202-A, in the 188th Judicial District Court
Of Gregg County, Texas, the Honorable Scott Novy, Judge Presiding
and
Cause Number 06-20-00010-CR
In the Court of Appeals for the Sixth Judicial District of Texas.

APPELLEE'S BRIEF IN RESPONSE

Vincent Christopher Botto:

1800 N.W. Loop 281, Ste. 303
Longview, TX 75604
vchrisbottolaw@gmail.com
Tel: 903-759-2200
Fax: 903-759-3306
State Bar No. 24064926

Attorney for Appellee

IDENTITY OF PARTIES AND COUNSEL

Appellee certifies that the following is a complete list of all parties to the trial court's judgment and the names and addresses of their trial and appellate counsel.

Presiding Judge:	**The Honorable J. Scott Novy** District Judge 188th Judicial District Gregg County 101 E. Methvin St. Suite #408 Longview, TX 75601
Appellant's Trial Counsel:	**Tanya Louise Reed** State Bar No. 24039204 Assistant Criminal District Attorney 101 East Methvin Street, Suite 333 Longview, Texas 75601 **Hugh Powell Taylor** State Bar No. 00788511 Retired
Appellee's Trial Counsel:	**Vincent Christopher Botto** State Bar No. 24064926 1800 N.W. Loop 281, Ste. 303 Longview, TX 75604
Appellate State's Attorney:	**Brendan Guy** State Bar No. 24034895 Assistant Criminal District Attorney 101 East Methvin, Ste. 333 Longview, TX 75601
Appellate Defense Attorney:	**Vincent Christopher Botto** State Bar No. 24064926 1800 N.W. Loop 281, Ste. 303 Longview, TX 75604

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IN THE COURT OF CRIMINAL APPEALS
OF THE STATE OF TEXAS

THE STATE OF TEXAS…… Appellant

v.

TRENTON KYLE GREEN…… Appellee

* * * * *

APPELLEE'S RESPONSE TO STATE'S BRIEF ON THE MERITS

* * * * *

TO THE HONORABLE COURT OF CRIMINAL APPEALS:

COMES NOW, TRENTON KYLE GREEN, by and through his attorney, Vincent Christopher Botto, as Appellee in the above numbered and entitled case, and files this, the Appellee's Response to the State's brief showing:

STATEMENT OF THE CASE

On July 25, 2019, Appellee was indicted in Cause Number 49,202-A for the offense of forgery (counterfeit money), alleged to have been committed on or about May 2, 2019, in Gregg County, Texas. [CR.I.3]. Appellee was served with the criminal indictment on August 1, 2019. [CR.I.4]. On November 1, 2019, Appellee filed a motion to quash the indictment alleging the District Court lacked jurisdiction because the indictment alleged a class C misdemeanor not a third-degree felony. [CR.I.8-9]. The trial court conducted a hearing on December 2, 2019, to determine the validity of Appellee's motion to quash. [RR.I.1]. On December 3, 2019, the trial court granted the motion to quash, and the State filed its notice to appeal. [CR.I.22, 24-27]. On November 23, 2020, the Court of Appeals for the Sixth Judicial District rendered its opinion affirming the trial court's ruling quashing the indictment. *See State v. Green*, 613 S.W.3d 571, 576 (Tex. App.-Texarkana Nov. 23, 2020, pet. granted).

ISSUES PRESENTED

I. The Court of Appeals did not err in holding section 32.21(e) is specifically conditioned upon Subsection (e-1) invoking the Penal Code's value ladder per the legislature's intent from the 2017 session.

II. The Court of Appeals correctly held the defendant's purpose for committing the forgery offense is an element under Texas Penal Code Section 32.21(e), because it is the only way to put a defendant on notice of the crime alleged.

STATEMENT OF THE FACTS

On July 25, 2019, the State of Texas attempted to charge Trenton Kyle Green with forgery through an indictment. [CR.I.3]. The State alleged on or about May 2, 2019, Trenton Kyle Green intended to defraud or harm another by making a writing so that it purported to be a fake twenty-dollar bill. Id. The State did not include how Appellee intended to defraud or harm another with said bill. Id.

On November 1, 2019, Appellee filed a motion to quash the indictment subject to the value ladder's addition to the forgery statute in 2017. [CR.I.8-9]. Due to the law change, Appellee noted the indictment alleged a class C misdemeanor removing it from the 188th Judicial District Court's jurisdiction. Id.

On November 14, 2019, the State filed an answer to Appellee's motion to quash. [CR.I.14-20]. The State claimed the conditional statement in every subsection of 32.21, "subject to Subsection (e-1)", Subsection (e-1) being the value ladder, gave the State discretion in how to plead.

On December 2, 2019, a hearing was held on the merits of Appellee's motion to quash. [RR.I.1]. There was no witness testimony or evidence produced. [RR.I.4-24]. On December 3,

2019, the trial court granted Appellee's motion to quash. [CR.I.22]. The State of Texas filed its notice to appeal the same day. [CR.I.24]

The Sixth Court of Appeals affirmed the trial court's ruling on November 23, 2020, holding the addition of Subsection (e-1) added an element requiring the State to plead and prove the defendant's "purpose" when it comes to forged writings. *Green*, 613 S.W.3d at 576.

SUMMARY OF THE ARGUMENT

The Court of Appeals hit the nail directly on the head determining the new language and added sections of Texas Penal Code Section 32.21 do two things: 1. Require the State of Texas to prosecute forgery crimes subject to the value ladder (like all other property crimes in the state), and 2. Require the State of Texas to plead and prove a defendant's purpose when intending to defraud or harm another with a forged document. Adding "subject to Subsection (e-1)" to every pertinent section of 32.21 did not bestow upon the State of Texas unfettered decision-making power to completely ignore the new value ladder section added by the legislature at the same time, but instead requires the State of Texas to adhere to the principals of statutory construction and breathe life into every word written.

The in pari materia doctrine requires the state to prosecute under the more specific portion of 32.21, which can be either 32.21(e) or 32.21(e-1), but only after the State of Texas has appropriately pled its case in the indictment putting the defendant on notice of the specific allegations and appropriate range of punishment. The State failed to do so in this case, and thus, the Court of Appeals did not err in upholding the trial court's ruling quashing the indictment.

The State of Texas' argument referring to the Alcohol and Beverage Code versus the Transportation Code falls in line with the Court of Appeals' holding, as the Alcohol and Beverage

Code is a more specific statute than the Texas Transportation Code. Additionally, its comparison of fleeing versus evading is not compelling and simply wrong. Fleeing has been deemed to be a separate and distinct statute from evading and requires different elements to be pled and proved.

The Court of Appeals did not write an additional element concerning a defendant's motive into the statute, the legislature did, and the State of Texas must adhere to it. Language was added to Section 32.21 by the Texas Legislature. The State wants to ignore the language and continue to incarcerate class C misdemeanor offenders as if they are felons – it is wrong and violates the Fourteenth Amendment of the United States Constitution. The State of Texas must notify the defendant of the charge and in so doing the potential punishment in its charging document. The State failed to do so in this case.

ARGUMENT

I. The Court of Appeals did not err in holding section 32.21(e) is specifically conditioned upon Subsection (e-1) invoking the Penal Code's value ladder per the legislature's intent from the 2017 session.

A. Statutory Interpretation Regarding the Language "subject to"

The State of Texas adamantly adheres to its singular argument – the new language of section 32.21 gives it the sole and absolute discretion to use the value ladder or not. To make this bold claim, the State relies on a fact it fabricated, "there is no explicit language in the statute mandating the use of the value ladder." See Appellant's Brief at 10. Lest we forget, this entire argument surrounds explicit language used to trigger a now more dominant section of 32.21, "subject to Subsection (e-1)". The question is not whether explicit language exists, it clearly does. The question is, what effect does the explicit language have on the statute, and for that we turn to the principals of statutory construction.

Once enacted the entire statue is presumed to be effective. TEX. GOV'T CODE § 311.021(2). Effect is given to the statute's plain meaning of its text unless the text is ambiguous or to do so would lead to absurd results that the legislature could not have intended. *Franklin v. State*, 579 S.W.3d 382, 386 (Tex. Crim. App. 2019). The statute is meant to be read as a whole and in its entirety to determine the meaning of particular provisions. *Id.* When determining the legislature's intent, the courts may look to the legislative history, laws on similar subjects, and the consequences of a particular construction, among other things. *Id.* As the Court of Appeals noted, a statute must comply with the constitutions of this state and the United States, the entire statute must be effective, a just and reasonable result is intended, and public interest is favored over any private interest. *Green*, 613 at 580; citing TEX. GOV'T CODE §311.201.

Penal Code Section 32.21(b) states the crime of forgery as follows, "A person commits an offense if he forges a writing with intent to defraud or harm another." TEX. PEN. CODE §32.21(b). Section 32.21(e)(1) states,

> Subject to Subsection (e-1), an offense under this section is a felony of the third-degree if the writing is or purports to be:
>
> 1. Part of an issue of money, securities, postage or revenue stamps.

TEX. PEN. CODE §32.21(e)(1). Subsection (e-1) states,

> If it is shown on the trial of an offense under this section that the actor engaged in conduct to obtain or attempt to obtain a property or service, an offense under this section is:
>
> (1) A Class C misdemeanor if the value of the property or service is less than $100…

TEX. PEN. CODE §32.21(e-1)(1). The statute must be read as a whole, with the goal being to materialize the legislature's intent.

A forgery occurs if a person forges a writing with intent to defraud or harm another. See TEX. PENAL CODE 32.21(b). Usually a class A misdemeanor, 32.21(c) conditions the range of the punishment on other elements in Subsections (d), (e) and (e-1). TEX. PENAL CODE §32.21(c). Every section of 32.21 works together to form the "Forgery Statute" and in 2017 the Legislature added Subsection (e-1) with a specific intent.

When the legislature uses the phrase, "subject to" it subordinates one section of an act or statute to the other. *R.R. St. & Co. v. Pilgrim Enters., Inc.,* 166 S.W.3d 232, 247 (Tex. 2005); *In re Houston Cty. Ex rel Session,* 515 S.W.3d 334, 336 (Tex. App.-Tyler 2015, orig. proceeding). The Texas Supreme Court noted that "subject to" means "subordinate to, subservient to, or limited by." *In re Houston Cty.* at 341. Also, when the words, "subject to" are used in a statute a dominant relationship is created between those portions of the enactment(s). *RR. St. & Co.,* 166 S.W.3d at 247. Meaning, the portion of the statute that is "subject to" the other portion is necessarily subordinate to the more dominant one. *Id.* Such an interpretation of "subject to" falls in line with the in pari materia doctrine relied on by the Court of Appeals.

"When a general statute and a more detailed enactment are in conflict, the latter will prevail." *Azeez v. State,* 248 S.W.3d 182, 191-192 (Tex. Crim. App. 2008). If two portions of law conflict they shall, if possible, be construed to both be given effect. TEX. GOV'T CODE §311.026. The legislature can modify or limit the scope of portions of a statute by other statutes or other parts of the same statute. *Diruzzo v. State,* 581 S.W.3d 788, 800 (Tex. Crim. App. 2019).

I believe this addresses the applicable law. I will now try to respond to each of the State's arguments by applying the law to the facts of Appellee's case. I will do so with corresponding sections to that of the State's brief, titled similarly, but in contravention.

1. The plain language of the statute subordinates sections 32.21(d) and 32.21(e) to Subsection 32.21(e-1) and explicitly requires the State of Texas to plead accordingly. (Addressing State's argument in paragraphs B and C).

Subject to the quarterback passing the concussion protocol, he may return to play. Subject to the aircraft generating enough speed to allow the airfoils to create the necessary amount of lift, the jetliner will not leave the ground. Subject to gravity and its planetary interactions, the Earth orbits the sun. Subject to subsection (e-1), an offense under this section is a third-degree felony. TEX. PEN. CODE §32.21(e). None of these statements are discretionary. It either happens, or it does not. The quarterback passes the protocol and returns to play, or he does not. The aircraft generates enough speed and takes off or it does not. Gravity works and we continue to orbit the sun, or it does not. A person passes a counterfeit twenty-dollar bill for a property or service and he is prosecuted under 32.21(e-1), or he intended to harm or defraud another in a way other than passing and he is prosecuted under 32.21(e). Discretion is simply not called for in any of these scenarios. Contrary to the State's interpretation, the legislature absolutely meant to mandate the use of the value ladder.

We know the legislature intended to mandate use of the value ladder because they told us as much. "S.B. 1824…updates the threshold ladder for forgery crimes related to fake checks, money orders, and other simple transactions to match the penalty ladder for the rest of Texas' theft offenses." SENATE COMM. ON CRIMINAL JUSTICE, BILL ANALYSIS, TEX. S.B. 1824, 85th Leg. R.S. (2017). The legislature went on to explain, "S.B. 1824 amends Section 32.21, Penal Code, to bring the offense of forgery in line with the damage amounts for all other property crimes." Id. One of

the main purposes for adding subsection 32.21(e-1) was to "keep non-violent offenders…out of Texas state jails" and presumably prisons. See Id. Interestingly, nowhere in the Bill Analysis are the words "prosecutorial discretion" found, which the legislature must know about if it is as pervasive as the State would have us believe. Simply put, it is clear the legislature intended the value ladder to control when dealing with "simple transactions" like purchasing a two-dollar cigarette lighter.

The State of Texas takes great strides to equate the new version of 32.21 to the interaction between Sections 521.451(c) of the Texas Transportation Code and 106.07 of the Texas Alcoholic Beverage Code. The State fails to make the realization that the in pari materia doctrine is specifically upheld by 521.451(c) being qualified by 106.07 – after all, 106.07 is the more specific of the two statutes. Any person using fake identification can be prosecuted under Transportation Code Section 521.451(c), but only Texan's age 21 and younger can be prosecuted under Alcohol and Beverage Code Section 106.07. See TEX. TRANS. CODE §521.451(c); ALC. AND BEV. CODE §106.07.

Because it is presumed the legislature knows how to draft statutes, and we must give effect to the words the legislature uses when drafting those statutes, it is clear by subordinating sections 32.21(d) and (e) to subsection 32.21(e-1) the legislature explicitly mandated the State of Texas to prosecute under the appropriate section as dictated by the facts of the case.

Here Appellee passed a counterfeit twenty-dollar bill to purchase a two-dollar cigarette lighter. The effect of the "State's discretion" let him languish in the Gregg County jail for more than four months and still has it voraciously seeking prosecution that would put him at risk of facing ten years in prison. What a sad state-of-affairs when the folks wearing the white hat can only see blood red. The State's "discretion" has them seeking more than the Shakespearean pound of flesh,

for they aim to make the defendant bleed. If a two-dollar cigarette lighter fails to fall within subsection (e-1) under the State's "discretion", what case will? This is the very reason the legislature did not make it discretionary and instead used explicit language to mandate use of the value ladder.

2. Subsection 32.21(e-1) is not a lesser included offense of section 32.21(e); it is a more specific statute placed in a dominant position over section 32.21(e) because 32.21(e) is "subject to Subsection 32.21(e-1)" (Response to State's paragraph D).

The in pari materia doctrine establishes the more specific statute controls over the more general enactment. The State believes the in pari materia doctrine is misplaced when dealing with multiple sections within the same statute. This cannot be so. That argument infringes upon the very nature of the doctrine, stripping it of its ethos – which is to allow all enactments relating to one subject to be governed by one spirit and policy. *Azeez*, 248 S.W.3d at 192.

Viewing 32.21 through the in pari materia lens helps one glean how the statute works. When the State of Texas aims to prove a defendant intended to harm or defraud a person without attempting to pass counterfeit money for a property or service, it will use section 32.21(e), and it will plead how it intends to prove the defendant intended to harm or defraud the victim. But, as is more often the case, when the State of Texas can only prove intent to harm or defraud due to a defendant's passing of the forged document, the value ladder of section 32.21(e-1) controls as it is the more specific enactment.

It is not a question of a lesser included offense prevailing as would be the case if the state failed to prove serious bodily injury during an aggravated assault trial, but did prove pain occurred, resulting in an assault conviction. Aggravated assault is a more specific statute calling for greater proof, and a more specific pleading than its lesser included counterpart.

Section 32.21, like the issue in *Azeez*, is the reverse. The offense carrying the lesser punishment, 32.21(e-1)(1)-(4), is also the more specific offense, or "special provision," requiring the State to plead and prove the case within that section. As the Court of Appeals noted, the State's interpretation of 32.21 "raises a grave and doubtful constitutional issue under the due process and due course of law provisions of the United States and Texas Constitutions." *Green*, 613 S.W.3d at 585. The State intends to prove a more serious crime with far less evidence, when proving more facts would put the defendant in a better position. The State's argument is both untenable and contrary to the law.

3. The State's interpretation would render the statute impermissibly vague (Response to State's paragraph E).

The State of Texas has misinterpreted *Earls v. State*, 707 S.W.2d 82 (Tex. Crim. App. 1986), to justify its improper position. *Earls* dealt with a jury verdict rendering a conviction for the lesser included offense of Theft from a Person after the defendant was indicted for Robbery. Robbery requires proof of more elements than Theft, including placing a person in fear. It is true the theft statute delineates many ways a theft can occur. *Earls* does not stand for the proposition that the State can simply plead "Theft" and then prove any portion of the statute they desire. Instead, the State must describe the said conduct in such a way the defendant is notified how he violated the statute. *See Earls*, 707 S.W.2d at 86-87. The State's argument is confusing because it invariably ignores this Court's instructions on charging instruments.

Courts engage in a two-step analysis to determine if adequate notice has been given in a charging instrument:

1. Identify the elements of the offense including the forbidden conduct, the required culpability, the required result, and the negation of any exception to the offense.

2. Do the definitions provide alternative manners or means in which the act or omission can be committed?

State v. Barbernell, 257 S.W.3d 248, 251 (Tex. Crim. App. 2008). The State of Texas is required to inform the defendant what he did wrong and in so doing make him aware of the potential punishment range. The State of Texas does not get to press an easy button, plead less than the required facts, prosecute under the more general section of the statute, yell, "prosecutorial discretion," dust off its hands, and throw a young man in prison for allegedly committing a class C misdemeanor. Under the State's theory, it would not have to provide notice of which version of 32.21 it was proceeding under, could plead broadly, and even if facts were shown at trial that the defendant should be prosecuted under subsection (e-1), the State could deprive the defendant of such relief merely because it chose to. Is that not the very definition of vagueness? That is also quite different than what happened in *Earls*, where the State proceeded under a more specific indictment for robbery and ended with the lesser included offense of theft. The State's reliance on the age-old cerebral exercise of whether the Transportation Code's Fleeing statute is the same as the Penal Code's Evading section is again misinformed.

The fleeing versus evading battle has been and continues to be waged in lower courts across the state. More often than not the appellate courts have determined the statutes create separate and distinct crimes, thus it is not a discretionary choice which one to prosecute, it is fact based. *See Horne v. State*, 228 S.W.3d 442, 449 (Tex. App.-Texarkana Jun. 19, 2007)(Because we hold they are elements of the offense, we find ourselves in agreement with the *Farrakhan* delineation of the elements of that offense, and we agree that the misdemeanor is not a lesser included offense of the felony); *Bray v. State*, No. 06-10-00151-CR (Tex. App.-Texarkana Mar. 22, 2011)(The Texas Legislature codified two criminal statutes regarding flight from a peace officer – evading arrest or

detention in a motor vehicle and fleeing or attempting to elude a police officer); *Crosby v. State*, No. 02-17-00027-CR, 18-19 (Tex. App.-Ft. Worth [2nd Dist.] Mar. 8, 2018)(Under these circumstances, the court of criminal appeals held that fleeing was not a lesser-included offense of evading detention with a motor vehicle. *Farrakhan*, 247 S.W.3d at 274. For our purposes, *Farrakhan* is controlling. Crosby cannot, therefore, show that fleeing is a lesser-include[d] offense in his case); *Martin v. State*, No. 2-04-107-CR (Tex. App.-Ft. Worth [2nd Dist.] Aug. 11, 2005)(Holding although fleeing is a lesser included offense of evading, the trial court did not err in not including the instruction in the jury charge because there was no evidence to indicate defendant did not know officer was attempting to arrest or detain him). Discretion does not dictate prosecution, facts do.

The State relies on *Alejos v. State,* 555 S.W.2d 444 (Tex. Crim. App. 1977), to claim this Court has empowered the State of Texas with unfettered discretion when statutes are similar. That is not correct. *Alejos* concluded, "while the same subject is treated," referring to evading arrest in the Penal Code and fleeing in the Transportation Code as codified in 1977, "they are in different acts having different objects, intended to cover different situations and were apparently not intended to be considered together." *Alejos,* 555 S.W.2d at 450-51. This is a different scenario than in section 32.21 where the exact same subject and object are treated in the very same section of one code.

Discretion has not been given to the State of Texas to plead less and get more. In none of the situations described by the State did this Court grant that kind of discretion. Allowing the State such leeway regarding section 32.21 results in unconstitutional vagueness because the State can then enhance the crime without providing notice to the defendant or proof beyond a reasonable doubt to the jury. This is not acceptable and is not what the legislature envisioned when changing the language of 32.21 in 2017.

4. The State's interpretation leads to absurd results (Response to State's paragraph F).

The Court of Appeals eloquently and thoroughly described how the State's interpretation would lead to unjust and unreasonable results. *Green*, 613 S.W.3d at 587-589. I can do little to improve upon it. It is instructive to look at companion case, *Lennox v. State*, 613 S.W.3d 597 (Tex. App.-Texarkana Nov. 23, 2020, pet. granted), where the defendant was sentenced to seventeen years in prison for what is a class B misdemeanor. These cases are bookends of this legal issue, with *Lennox* giving us a prime example why we must deal with this at the charging stage.

It is confusing why the State looks back in time to the pre-2017 statute to argue in favor of continuing to send folks engaged in "simple transactions" to the penitentiary. In 2017 the legislature made a conscious decision to amend the statute, and in so doing, gave the State explicit direction on what to do when a person uses counterfeit money to obtain a property or service – use the value ladder.

The Court of Appeals did not create a "bizarre variance" allowing the State to prosecute a ten-dollar forged check differently than a fake ten-dollar bill used to purchase an item. If the State believes it can prove the state jail felony of fraudulent use or possession of identifying information, then it can plead it, correctly putting the defendant on notice of what his punishment range will be and prove the crime beyond a reasonable doubt. The State argues a forged check will also always meet the elements of fraudulent use or possession. I disagree. The crimes are separate and distinct with different elements. Perhaps a check will fall within this category sometimes, perhaps it will not. If the facts dictate fraudulent use or possession, the State can plead and prove it. That is not our concern here.

The only absurd result would be allowing the State to continue ignoring explicit language directing it to prosecute certain violators under the value ladder. The State, left unbridled, will continue to seek incarcerating class B misdemeanor offenders for seventeen years and class C misdemeanor offenders for up to ten years.

II. The Court of Appeals correctly held the defendant's purpose for committing the forgery offense is an element under Texas Penal Code Section 32.21(e), because it is the only way to put a defendant on notice of the crime alleged.

Every person accused has a constitutional right to be informed of the nature of the charges against him. *Curry v. State*, 30 S.W.3d 394, 398 (Tex. Crim. App. 2000). Tracking the language of the statute usually provides sufficient notice to the alleged offender. *Id.* An indictment is sufficient when it charges the commission of the offense in ordinary and concise language enabling a reasonable person to know what is meant, what crime he is charged with and enabling the court to pronounce the proper judgment upon conviction. CODE OF CRIM. PROC., Art. 21.11. Prior to 2017, the State's indictment against Appellee may have been sufficient. After the 2017 amendments to section 32.21, the State's indictment in this case fails for inadequately notifying Appellee what he is charged with, thus rendering it impossible for the judge to render the appropriate sentence.

By adding the explicit mandatory language to section 32.21(e), "subject to Subsection (e-1)", the legislature added an element to the crime that must be alleged whether the State proceeds under 32.21(e) or 32.21(e-1). The State now must inform the defendant how it aims to prove the defendant "inten[ded] to defraud or harm another." TEX. PEN. CODE §32.21(b). The State asserts it would be too daunting to include a "purpose" when proceeding under section 32.21(e) but seems to capitulate the requirement when proceeding under section 32.21(e-1). This is odd, since the State originally argued there were myriad of ways to defraud or harm a victim other than passing

counterfeit money for a good or service. The State gave a long dissertation on feuding governments and sinister plots of deception in its attempt to wiggle out of the value ladder requirement. Now, according to the State, after making such fanciful claims – the task is daunting and places far too great a burden on the prosecution. So, it asks this Court to turn a blind eye to the statutory language mandating use of the value ladder and requiring the State to plead and prove the defendant's purpose in possessing or creating a forged document.

When the legislature added the "subject to Subsection (e-1)" language coupled with the value ladder provision in Subsection (e-1) it created a new element to be proved when prosecuting a defendant for forgery. The new element is the defendant's purpose. This is true because without such an element the statute is ambiguous and unclear. The ambiguity plays out in this case. Charging Appellee as the State did:

> "Trenton Kyle Green, hereinafter called Defendant, did then and there with intent to defraud or harm another, make a writing so that it purported to have been executed in a numbered sequence other than was in fact the case, and said writing purported to be a part of an issue of money of the tenor following: a twenty-dollar bill marked with serial number MK85434917F,"

leaves Appellee in the precarious position of not knowing if he is being prosecuted under section 32.21(e) or (e-1). [CR.I.3]. The State argues, since it did not allege the element of passing to obtain a property or service, the defendant is on notice he is being prosecuted for the third-degree felony under section 32.21(e) and he need not worry about the actual facts of the case. The State's argument fails as it ignores that it must prove the defendant intended to defraud or harm another, and it must prove that intent came from a twenty-dollar bill. Those allegations are in the indictment. The State cannot use its "discretion" to ignore these forgery elements. The State has failed to inform Appellee how he intended to defraud or harm another with the twenty-dollar bill, which is now required since section 32.21(e) is subordinate and subject to Subsection (e-1). If the

State is relying on a method other than passing the counterfeit bill to prove Appellee's intent to defraud or harm, it must plead it so we can mount a defense and the judge knows what punishment to proceed with if Appellee is convicted.

Making sections 32.21(d) and (e) subject to the value ladder in (e-1), the legislature required the State of Texas to plead and prove the additional element of purpose. The Statute does not work without the new element. A charging instrument for Forgery that does not plead the defendant's purpose fails to adequately notify the defendant under which section the State is proceeding and what his punishment range is, thus rendering the charging document fatally deficient.

CONCLUSION

In 2017 the legislature added language to Texas Penal Code Section 32.21 where it subordinated sections 32.21(d) and (e) to the statute's new section, 32.21(e-1). This was done so forgery crimes related to fake checks, money orders, and other simple transactions would match the penalty ladder for the rest of Texas' theft offenses. By using explicit language, the Texas Legislature mandated use of section 32.21(e-1) when the defendant's purpose was to pass the forged document for a property or service.

Statutory construction requires the courts to interpret statutes in their entirety and use doctrines like in pari materia when necessary. When a general provision is eclipsed by a more a specific enactment, the State must proceed under the latter.

Because the State may be able to allege a purpose to defraud or harm another other than passing, sections 32.21(d) and (e) can stand alone, only when the purpose is specifically pled. The

legislature consciously added the element of purpose to the forgery statute with the 2017 amendment.

In Appellee's case the Court of Appeals did not err in upholding the trial court's order quashing the indictment. The State failed to include how Appellee intended to defraud or harm another in its charging instrument, thus the indictment was fatally flawed. Had the State pled the facts appropriately, the alleged crime would be that of a class C misdemeanor. The 188th District Court does not have jurisdiction over class C misdemeanors.

PRAYER

WHEREFORE, PREMISES CONSIDERED, Appellee prays this Honorable Court affirm the Court of Appeals' order upholding the trial court's ruling quashing the indictment.

Respectfully Submitted,

/s/Vincent Christopher Botto
Vincent Christopher Botto
Attorney for Appellee
SBN: 24064926
1800 N.W. Loop 281, Ste. 303
Longview, Texas 75604
Ph: 903-759-2200
Fax: 903-759-3306

CERTIFICATE OF COMPLIANCE

In compliance with Texas Rule of Appellate Procedure 9.4(i)(3), I, Chris Botto, Attorney for Trenton Kyle Green, Appellee, certify that the number of words in the Appellee's Brief submitted on April 15, 2021, excluding those matters listed in Rule 9.4(i)(1) is 4,822.

/s/Vincent Chris Botto
Vincent Christopher Botto
Attorney for Appellee
SBN: 24064926
300 N. Green St. Suite 315
vchrisbottolaw@gmail.com
Tel: 903-240-5217
Fax: 903-471-0035

CERTIFICATE OF SERVICE

I, Chris Botto, Attorney for Appellee, certify that a copy of the foregoing brief has been served on Mr. Brendan Wyatt Guy, Appellant's Attorney, The State of Texas, by electronic mail at Brendan.Guy@co.gregg.tx.us on the 15th day of April, 2021.

/s/Vincent Christopher Botto
Vincent Christopher Botto
Attorney for Appellee
SBN: 24064926
1800 N.W. Loop 281, Ste. 303
Longview, Texas 75604
Ph: 903-759-2200
Fax: 903-759-3306

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Bar No. 24064926
vchrisbottolaw@gmail.com
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